

October 27, 1995
REPORT TO THE COMMITTEE ON PUBLIC
SAFETY AND NEIGHBORHOOD SERVICES

ISSUES PERTAINING TO FINANCING OF THE CONSTRUCTION
AND OPERATION OF BRANCH PUBLIC LIBRARIES

BACKGROUND

At the September 20, 1995, meeting of the Public Safety and Neighborhood Services Committee ("Committee"), a hearing was held to take public comment on the status of The City's branch public libraries. The Committee also discussed whether to place a bond authorization measure on an upcoming ballot to finance improvements to several branch public libraries.

The Committee voted to recommend to the full City Council that a bond authorization measure be placed on the November, 1996, ballot. The measure would include funding for capital improvements, operations and maintenance, and technology for certain branch public libraries. The Committee also directed the City Manager to return to the Committee on November 1, 1995, with certain information, which among other things included clarification on "bondable vs. non-bondable" branch public library needs.

The City Manager has prepared the requested report (City Manager Report No. 95-255, dated October 25, 1995). His report, which was prepared in consultation with the City Attorney, outlines in detail which types of costs are, in the City Attorney's view, lawfully payable out of general obligation bond proceeds. It includes discussion of specific operation and maintenance costs.

In addition to questions about financing of branch public library construction costs, legal questions also arose as to the ability of the "Friends of the Library" to participate in promoting passage of a bond measure. From information obtained by telephone on October 13 from Betty G. Sherman, the elected corporate secretary of the Friends of the Library ("Friends"), we confirmed that Friends is a qualified tax-exempt organization both under state and federal law (i.e., is a qualified 501(c)(3) organization). Friends regularly files the required 990 Form to maintain its tax exempt status. Ms. Sherman informed us that a separate legal entity, "Citizens in Action for Local Libraries" ("CALL") has been formed to accept and expend monies for the express purpose of

supporting library-related ballot issues. That organization has registered with the California Fair Political Practices Commission as a "recipient committee" in accordance with state law and regulations.

This report fulfills a two-fold purpose: (1) to outline the fundamental law setting limits on use of general obligation bond proceeds; and, (2) to outline briefly the legal constraints on the ability of Friends and CALL to actively participate in a bond measure election.

QUESTIONS PRESENTED

(1) May the cost of operation and maintenance of branch public libraries lawfully be financed by general obligation bond proceeds?

(2) What legal constraints, if any, affect Friends and CALL's ability to actively participate in a municipal branch public library bond measure election?

SHORT ANSWERS

(1) No. Article XIII A, Section 1(b), and Article XVI, Section 18, of the California Constitution and the California Municipal Improvement Bond Act of 1901, authorize the issuance of general obligation bonds for acquisition and improvement of real property for public purposes. Operation and maintenance costs may not be financed under these provisions.

(2) The City's Municipal Election Campaign Finance Ordinance contains no contribution limits on organizations formed solely to support or oppose ballot measures. That ordinance, however, adopts the state's campaign finance disclosure laws embodied in the Political Reform Act. If Friends or CALL raises or spends money to promote a library bond measure, they may be required to file statements of organization and several periodic disclosure forms pertaining to their campaign activities. If Friends or CALL receives public funds, those public funds may not be used to promote passage of a ballot measure. Since Friends is a qualified federal and state tax-exempt organization, to avoid jeopardizing its tax-exempt status, it should consult a tax attorney.

ANALYSIS

I. May general obligation bond proceeds be used to pay for operation and maintenance costs of branch public libraries?

Issuance of general obligation bonds in California is governed generally by Article XVI, Section 18, of the California Constitution and is governed specifically by Article XIII A, Section 1(b), of the California Constitution, and by the California Municipal Improvement Bond Act of 1901.

In general, Article XVI, Section 18, of the California Constitution requires local governments to adopt balanced budgets, unless long-term indebtedness has been approved by two-thirds of the voters.

Article XIII A, Section 1(b), of the California Constitution is a voter-approved exception to the one percent (1%) property tax limitation

set forth in Section 1(a) of the same Article. In relevant part, Section 1(b) states that the one percent (1%) limitation in Section 1(a) does not apply to "any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition" (emphasis added). Cal. Const. art XIII A, Section 1(b).

General obligation bonds are issued by a city pursuant to these constitutional provisions, which are implemented by the Municipal Improvement Bond Act of 1901 ("the Bond Act"). The Bond Act is codified at California Government Code sections 43600 through 43638, and it governs how general obligation bonds are to be authorized and issued in California.

California Government Code section 43602 authorizes issuance of general obligation bonds for any "municipal improvement." Section 43600 defines "municipal improvement" in relevant part to mean "buildings for municipal uses . . . or structures necessary or convenient to carry out the objects, purposes, and powers of the city. 'Municipal improvement' also includes the acquisition of real property . . . for any public use or uses. . . ." (emphasis added). Cal. Gov't. Code Section 43600. Clearly, the construction of branch public libraries can be included in this generic category.

However, California courts have construed similar language to prohibit issuance of bonds for the purposes of repair or maintenance of existing structures. See *City of Long Beach v. Boynton*, 17 Cal. App. 290 (1911) (construing a city charter that authorized issuance of bonds to acquire, construct or complete any permanent public building or improvement as prohibiting repair or maintenance). See also 15 McQuillin, *Municipal Corporations*, Section 43.22 (3d ed. 1995). It is clear that general obligation bonds proceeds may not be used for operation and maintenance purposes.

II. Legal Constraints on Friends' Participation in Bond Measure Election

A. Campaign Finance Laws

1. City's Laws

A leading United States Supreme court case arising out of California holds that a city ordinance that purports to set monetary limits on contributions to committees formed to support or oppose ballot measures violates the First Amendment rights of association and speech. *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981). The City of San Diego's Municipal Election Campaign Control Ordinance, codified at San Diego Municipal Code (SDMC) sections 27.2901 through 27.2975, conforms to the principles enunciated in the Berkeley case. The ordinance contains no contribution limits on organizations formed solely to support or oppose ballot measures.F

If an organization is formed in part to support or oppose ballot measures and in part to support or oppose candidates in City

elections, the organization would be subject to the City's campaign contribution limits. Organizations are prohibited from contributing monies to a candidate's campaign. SDMC ' 27.2947.

City law adopts the state's campaign finance disclosure laws by reference. SDMC Section 27.2931. The state's disclosure requirements are discussed in the next portion of this report.

2. State's Laws

Requiring groups that support ballot measures to file disclosure forms pertaining to their political activities is constitutional. *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 299-300 (1981).

The California Political Reform Act ("Act") is codified at California Government Code sections 81000 through 91015. The Act, among other things, governs disclosure of campaign finances. Cal. Gov't Code Sections 84100-84400. A person or group of persons that receive contributions of, or expend, \$1000 or more per calendar year for political purposes is a "committee" within the meaning of the Act. Cal. Gov't Code Section 82013. Committees that support or oppose ballot measures in a single city are called "city general purpose committees." Cal. Gov't Code Section 82027.5(c). Once it has received or spent the requisite amount of money for a political purpose (which includes supporting or opposing a ballot measure), a committee is required to file not only a statement of organization, but also several types of campaign disclosure forms. Cal. Gov't Code Sections 94101 (statements of organization), 84200 (semi-annual statements), and 84200.5 (pre-election statements), among others.

If Friends or CALL receives or spends \$1000 in a calendar year to support a branch library bond measure, they would qualify as a "city general purpose committee" and would be required to file several disclosure forms.

According to facts provided by Ms. Sherman, CALL has already filed the required forms to engage in supporting or opposing a ballot measure in this state.

B. Expenditure of Public Funds to Support Ballot Measures

Absent statutory authority, it is unlawful in California to spend public monies to support or oppose ballot measures. *Stanson v. Mott*, 17 Cal. 3d 206 (1976) (holding that a state agency director impermissibly spent public funds to support a ballot measure for acquisition of park land and facilities). If Friends receives public monies (for example, Community Development Block Grant monies), those monies may not lawfully be spent to support a library ballot measure. Public monies may, however, be spent to educate the public about a ballot measure.

C. Support of Ballot Measures as Affecting Tax-exempt Status

According to the facts provided by Ms. Sherman, Friends qualifies as a tax-exempt organization under both federal and state law. The City Attorney is not in a position to provide advice to Friends about tax laws. Before engaging in activities advocating passage of a library

bond measure, which may jeopardize its tax-exempt status, Friends should seek the advice of a tax attorney. The City Attorney has no facts about the tax status of CALL. However, since CALL was organized expressly to raise and spend money for political purposes, it is probably not a qualified tax-exempt organization.

Respectfully submitted,
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City Attorney

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